

Ton-Son Development Corp. and Massachusetts Laborers' Benefit Funds. Case 1-CA-28153

January 21, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon a charge filed by the Massachusetts Laborers' Benefit Funds on April 3, 1991,¹ the General Counsel of the National Labor Relations Board issued a complaint on May 9, 1991, against Ton-Son Development Corporation, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On October 21, the General Counsel filed a Motion for Summary Judgment. On October 23, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by certified mail dated September 30, notified the Respondent that unless an answer was received by October 7, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Massachusetts corporation, with an office and place of business in East Bridgewater, Massachusetts, has been engaged as a framing contractor in the construction industry. During the 12-month period preceding issuance of the complaint the Respondent provided services valued in excess of \$50,000 for employers who are themselves directly engaged in interstate commerce, and it purchased and received at its East Bridgewater facility products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since June 5, 1990, the Massachusetts Laborers' District Council (the Union) has been the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All laborers employed by members of the Associations and the employers who have authorized said Associations to bargain on their behalf, including Respondent, but excluding guards and supervisors as defined in the Act.

The Associated General Contractors of Massachusetts, Inc. and Building Trades Employers Association of Boston and Eastern Massachusetts, Inc. (the Associations) are organizations composed of employers in the construction industry that represent their employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union. On June 1, 1988, the Associations and the Union entered into an agreement effective June 1, 1988, through May 31, 1991. On June 5, 1990, the Respondent executed an "Acceptance of Agreement and Declaration of Trust" with the Union by which it agreed to be bound by the 1988-1991 agreement.

The complaint alleges that (1) since about June 5, 1990, the Respondent has failed and refused to pay the fringe benefit amounts which have become due since about June 5, 1990, under articles XI, XII, XIII, XIV, and XV of the 1988-1991 agreement; (2) since about June 5, 1990, the Respondent has failed to submit remittance reports as required by the 1988-1991 agreement; (3) since about March 20, 1991, the Respondent has failed and refused to permit the audit of its books and records as re-

¹ All dates are in 1991 unless otherwise indicated.

quested by the Massachusetts Laborers' Benefit Funds (the Funds) on February 7, 1991, as the authorized representative of the Union pursuant to the 1988-1991 agreement; and (4) since about March 20, 1991, the Respondent has failed and refused to furnish its payroll register, its state and Federal quarterly income tax returns, and its W-2 Forms for all of its employees, as requested by the Funds and which are alleged without contradiction to be relevant and necessary to the Union's performance of its representative functions in this case.

We find that, by the above acts and conduct, the Respondent has failed and refused to bargain collectively and in good faith with the representative of its employees, and that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By failing and refusing to pay the fringe benefit amounts which have become due under the collective-bargaining agreement since about June 5, 1990; failing to submit remittance reports as required by the collective-bargaining agreement since June 5, 1990; failing and refusing since about March 20, 1991, to permit the Funds to conduct an audit of the Respondent's books and records; and by failing and refusing since about March 20, 1991, to furnish information to the Funds concerning the Respondent's payroll register, its state and Federal quarterly income tax returns, and the W-2 Forms for the Respondent's employees, the Respondent has failed and refused to bargain in good faith with the Union and has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to remit to the Funds the fringe benefit amounts which have become due since June 5, 1990, as required by the collective-bargaining agreement which have not been paid, with any additional amounts applicable to those payments to be computed in accordance with the Board's decision in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). The Respondent shall also reimburse its unit employees at the East Bridgewater facility for any expenses resulting from its failure to make its contractually required fringe benefit remittances to the Funds in the manner set forth in *Kraft Plumbing & Heating*,

252 NLRB 891 fn. 2 (1980), *enfd.* 661 F.2d 940 (9th Cir. 1981), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

We shall also order the Respondent to submit to the Funds those remittance reports required by the collective-bargaining agreement since June 5, 1990; to permit the Funds, as the representative of the Union, to conduct an audit of the Respondent's books and records; and to furnish the Funds with the Respondent's payroll register; its state and Federal quarterly income tax returns; and its W-2 Forms for all the Respondent's employees.

ORDER

The National Labor Relations Board orders that the Respondent, Ton-Son Development Corporation, East Bridgewater, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the Massachusetts Laborers' District Council, during the term of the collective-bargaining agreement by failing and refusing to remit to the Funds fringe benefit amounts which have become due since June 5, 1990.

(b) Failing and refusing since June 5, 1990, to submit remittance reports to the Funds as required by the collective-bargaining agreement.

(c) Failing and refusing to permit the Funds, since March 20, 1991, to conduct an audit of the Respondent's books and records.

(d) Failing and refusing, since March 20, 1991, to furnish the Funds information concerning the Respondent's payroll register; its state and Federal quarterly income tax returns; and the W-2 Forms for all the Respondent's employees.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make all fringe benefit contributions which have become due since June 5, 1990, as required by the collective-bargaining agreement, and make unit employees whole, as set forth in the remedy section of this decision.

(b) Provide to the Funds the remittance reports that are required by the collective-bargaining agreement and have been due since June 5, 1990.

(c) Permit the Funds, as representative of the Union, to conduct an audit of the Respondent's books and records.

(d) Furnish the Funds, as representative of the Union, the Respondent's payroll register; its state

and Federal quarterly income tax returns; and its W-2 Forms for all the Respondent's employees.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(f) Post at its facility in East Bridgewater, Massachusetts, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to bargain in good faith with the Massachusetts Laborers' District Council, by failing and refusing to make contractually required fringe benefit payments.

WE WILL NOT fail and refuse to submit remittance reports to the Massachusetts Laborers' Benefit Funds as required by the collective-bargaining agreement.

WE WILL NOT fail and refuse to permit the Funds to conduct an audit of our books and records.

WE WILL NOT fail and refuse to furnish the Funds requested information concerning our payroll register; state and Federal quarterly income tax returns; and the W-2 Forms for our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make all required fringe benefit payments which have become due since June 5, 1990, as required by the collective-bargaining agreement, and reimburse our unit employees, with interest, for any expenses resulting from our failure to make the required payments.

WE WILL provide to the Funds the remittance reports that are required by the collective-bargaining agreement that have become due since June 5, 1990.

WE WILL permit the Funds, as representative of the Union, to conduct an audit of our books and records.

WE WILL furnish the Funds, as representative of the Union, our payroll register; our state and Federal quarterly income tax returns; and the W-2 Forms for our employees.

TON-SON DEVELOPMENT CORP.